

MASTER AGREEMENT BETWEEN CITY OF SUNNYVALE
AND UNION BANK
FOR BANKING SERVICES

THIS AGREEMENT ("Agreement"), is entered into this 8th day of March, 2001, by and between CITY OF SUNNYVALE, a California municipal corporation ("CITY"), and UNION BANK OF CALIFORNIA ("BANK"),

RECITALS

WHEREAS, CITY, on July 6, 2000, sent a Request for Proposal (RFP No. F0007-01) ("RFP"), hereby incorporated by reference, to all banks located within the territorial limits of CITY for both basic and optional banking services for a period of at least three (3) years; and

WHEREAS, in August 2000, CITY received responses for both basic and optional banking services and the proposals were evaluated by the CITY staff; and

WHEREAS, CITY wishes to contract with a bank having experience in the receipt and management of municipal funds; and

WHEREAS, BANK is willing to enter into a contract with CITY to provide professional banking services in accordance with this Agreement; and

WHEREAS, BANK's response to RFP is hereby incorporated by reference; and

WHEREAS, it was recommended that the City Council of CITY award a five-year agreement to BANK to provide banking services to CITY; and

WHEREAS, on Jan 30, 2001, the City Council approved the recommendation;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants, agreements, and conditions contained herein, the parties do hereby agree as follows:

1. TERM OF AGREEMENT. BANK shall serve as CITY's depository and provider of banking services for a period of five (5) years, commencing January 1, 2001 and ending December 31, 2005.

2. CANCELLATION OF AGREEMENT. CITY or BANK has the right to terminate

this Agreement at any time upon one hundred twenty (120) days written notice of intent to terminate. A decision to terminate may not be made as a result of profitability or non-profitability by either party. Notwithstanding any such notice of termination, the provisions of this Agreement shall remain in full force and effect as to all transactions, which shall have occurred prior to the effective date of termination.

3. DEPOSITORY SERVICE. BANK shall furnish CITY with a checking account ("Operating Account") into which deposits shall normally be made on a daily basis. The Operating Account shall function in accord with Exhibit "A"-Contract for Deposit of Money, Exhibit "B"-Commercial Cash Services Agreement and Instructions, Exhibit "C" - Night Depository Service Key Issuance Record, and Exhibit "D"-Authorization and Agreement for Cash Management Services, which are attached and incorporated by this reference.

BANK agrees to provide supporting documentation on all deposit adjustments, regardless of dollar amount. If BANK is unwilling or unable to provide supporting documentation, CITY reserves the right to require that BANK reverse the deposit adjustment.

4. WIRE TRANSFERS. BANK shall provide or accept wire transfers as necessary or requested, pursuant to Exhibit "E"-Master Funds Transfer Agreement, Exhibit "F"-Funds Transfer Authorization, Exhibit "G"-Funds Transfer Authorization Addendum, and Exhibit "H"-Funds Transfer Order, which are attached and incorporated by reference.

5. MONTHLY ACCOUNT ANALYSIS. The terms of monthly account analysis billing are defined in Exhibit "I"-Bank Compensation Agreement. CITY agrees to review account analysis statements within 30 days of receipt and must notify the BANK within the same 30 days of any billing disputes via fax at (877) 430-7883 to the attention of the Government Services unit leader. The BANK will notify CITY of the provisional credit to Account Analysis of the disputed amount within two business days after receipt of notification from the CITY of any billing errors on the Account Analysis statement. The credit will appear on the Account Analysis statement for the month that it was posted to. CITY must be specific as to the total dollar amount of claim and what the total dollar amount represents. BANK has 30 days from receipt of notification to

review the alleged billing error(s) reported by the CITY and respond to CITY.

Provisional credit will become permanent if BANK is unable to provide documentation to substantiate the original amount billed to the CITY. If BANK fails to notify CITY of the provisional credit to Account Analysis within two business days after notification from CITY, BANK will pay interest in the form of Account Analysis credit to the CITY on the amount disputed by the CITY from the date the BANK was notified of the disputed amount until paid. The credit will appear on the Account Analysis statement for the month that it was posted to. Interest shall be paid at the Earnings Credit Rate in effect at that time.

This does not apply to Merchant Card Services since Merchant Services fees are not billed to Account Analysis. The Government Services team will provide assistance, when necessary, to assist the CITY in receiving a timely response to inquiries relating to Merchant Services.

6. PRIORITY TELLER SERVICES. Should a need arise, upon CITY's request, BANK shall provide for service of CITY's deposits upon the same terms and, to the extent possible given CITY's banking requirements, at the same work stations made available to BANK's customers.

7. SUPPLIES AND PRINTING CHARGES. The CITY may order bank supplies via the Internet at the price stated. No additional markup will be applied to Account Analysis for bank supplies ordered via the Internet. Outside vendor service purchases will be applied to Account Analysis with no additional markup reflected for supplies.

BANK's Customer Service team assigned to the CITY will provide CITY with a copy of the CITY's bank supply orders as reflected on the monthly Inventory Supply System Recap Report which will include, but not be limited to, order number, item description, and number, quantity ordered, and total dollar amount of each order number. This information will be provided to CITY on a monthly basis. BANK will notify CITY of provisional credit to Account Analysis for bank supplies ordered when BANK is unable to provide CITY with this information, until resolution is determined. The credit will appear on the Account Analysis statement for the month that it was posted to.

Should the CITY need an occasional copy of a bank supplies order placed up to 90 days previously, the BANK's customer service team will research and provide a copy

when available. The copy would include the address that the bank supplies were shipped to.

The BANK's Customer Service team will also provide a monthly report when vendor supplies (deposit tickets, endorsement stamps, and checks) are ordered through Customer Service. This vendor report would include bank account number, location name, quantity and item ordered, date charged, job number, and total cost of each order.

The BANK recommends that the CITY provide the BANK with a list of individuals who are authorized to order vendor supplies.

8. SWEEP INVESTMENT. Repurchase agreements of CITY under this Agreement shall be subject to Exhibit "J"-Master Repurchase Agreement and Exhibit "K"-Customer Sweep Agreement for Repurchase Agreements, attached and incorporated by this reference.

9. COMPENSATION. The BANK will provide the CITY with a five-year fixed price term from January 1, 2001 through December 31, 2005 for all fees stated in this Agreement, BANK's proposal including Exhibits "L"- BANK's Schedule of Fees dated April 1, 2000 and Exhibit "M"- BANK's Banking Services Fee Schedule (also known as the "Bid Form"), which are attached and incorporated by reference. Prices specified in this Agreement, supersede any conflicting like fees stated in the BANK's proposal, including BANK's Banking Services Fee Schedule. Prices specified in BANK's proposal supersede any conflicting like fees stated in BANK's Schedule of Fees dated April 1, 2000.

(a) Rate on Merchant Card Transactions. A fixed discount rate of 2.19% has been committed for all of the current merchant locations (with the exception of the Internet merchant location) for the CITY for the full term of the contract.

During the five-year term of this contract, BANK guarantees that discount rates and fees will only be adjusted as a result of changes in the following:

- Changes in interchange rates, categories and/or other fees from the card companies
- Changes in communications costs and/or other cost changes from networks

- Changes in processing methods used by the CITY locations
- Changes in activity (volume and/or average ticket) resulting in increased costs to the BANK from the card companies and networks

If there is a net increase in the combined components, and BANK wishes to pass this increase on to CITY, CITY may require BANK to provide a letter certifying that any increase in the discount rate will only be as a result of the items stipulated above. BANK agrees to decrease the Discount Rate charged to the CITY if there is a net decrease in the combined components.

BANK will change Merchant Number #5415309912667970 (Sunnyvale Community Center) from a "Retail" location to a "Mail Order/Phone Order" location at the same discount rate of 2.19%. All other locations remain classified as "Retail".

Downgrade fees for the Sunnyvale Community Center location will be based on mail/phone qualifications; downgrade fees for all other accounts will be based on retail/card present qualifications. Qualification criteria is subject to change based on changes to the processing requirements of the card companies. The qualification criteria is outlined in the brochure titled: "Understanding Interchange Qualification Criteria."

Current downgrade fees are:

	Retail/Card Present Processing	Mail/Phone and Non Card Swiped Processing
Qualified	N/A	N/A
Partially Qualified	.54%	.73%
Non Qualified	.99%	1.06%

Downgrade fees as well as the downgrade categories are subject to change based on revisions to interchange fees and categories by the card companies. BANK agrees to provide a letter certifying that any increase in downgrade fees or changes to downgrade categories resulting in increased fees resulted from changes in interchange fees and categories initiated and imposed by the card companies and were

not initiated by BANK.

BANK agrees to work with CITY to minimize credit card processing fees charged to CITY by researching and providing information regarding individual CITY merchant locations as requested by CITY for up to one (1) hour total per month at no charge.

b) New Services. Any new services that the CITY wishes to add will be governed by BANK's Banking Services Fee Schedule. Fees for any new service added that were not included in BANK's Banking Services Fee Schedule will be based on BANK's Schedule of Fees in effect at the time of implementation of the new service.

10. CASHIERING TRAINING CLASSES. Approximately twice each year at times mutually agreeable to CITY and BANK, CITY may hold cashiering training classes focusing on cash handling and deposit preparation. BANK shall, upon reasonable notice, assist CITY at no additional cost to CITY. CITY shall use its best efforts to schedule cashiering training classes at such times and places as are convenient to BANK.

11. EMERGENCY/DISASTER PLANNING. BANK shall work with CITY in developing an agreed upon plan for providing banking services in the event of a major emergency or disaster.

12. CONFIDENTIAL INFORMATION. BANK shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY which BANK may become aware of in the performance of its service.

13. COMPLIANCE WITH LAWS. (a). BANK shall adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.

(b). BANK shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

14. CITY REPRESENTATIVE. The Director of Finance or his/her designee shall represent CITY in all matters pertaining to the services to be rendered under this

Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

15. BANK REPRESENTATIVE. A representative of the BANK familiar with Public Agencies supported by a Government Customer Services Unit shall represent BANK in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of BANK pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the BANK representative.

16. NOTICES. All notices required by the Agreement hereunder shall be given in writing and shall be personally delivered or sent by first class, registered, or certified mail, postage paid or by commercial courier addressed as follows:

To CITY: City of Sunnyvale
 Director of Finance
 P.O. Box 3707
 Sunnyvale, CA 94088-3707

To BANK: Union Bank of California
 Government Services Division
 200 Pringle Ave, Suite 250
 Walnut Creek, CA 94596

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone e-mail, or facsimile transmission, to accomplish timely communication. In the event of contract termination, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered to constitute effective notice.

Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

17. EFFECT OF WAIVER OF BREACH OR VIOLATION. The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance or law shall not be deemed to be a waiver of any other term,

covenant, condition, ordinance or law or of any subsequent breach or violation of the same or any other term, covenant, condition, ordinance or law. The subsequent acceptance by either party of any fee or other money, which may become due hereunder, shall not be deemed a waiver of any preceding breach or violation by the other party of any term, ordinance or condition of this Agreement or of any applicable law or ordinance.

18. INDEMNIFICATION. BANK and CITY shall each indemnify and hold harmless the other and its officers, directors, officials, employees, volunteers, and agents from and against all claims, damages, losses and expenses, including attorney's fees, arising out of the performance of the services described herein, caused in whole or in part by any negligent act or omission of BANK or CITY, respectively, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of BANK or CITY, respectively. This provision shall survive the termination of this Agreement and shall be binding upon each party's successors, assigns, heirs and personal representatives.

19. GOVERNING LAW: VENUE. This Agreement shall be deemed to have been made and shall be construed in accordance with the laws of the State of California. Any action pertaining to this Agreement shall be commenced in the Superior Court of the State of California, County of Santa Clara.

20. RIGHTS AND REMEDIES ARE CUMULATIVE. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

21. ATTORNEYS FEES. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

22. DOCUMENT REPRESENTS ENTIRE AGREEMENT. This document

represents the entire and integrated agreement between CITY and BANK and supersedes all prior negotiations, representations or agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and BANK. All provisions of this Agreement are expressly made conditions. CITY and BANK shall sign all of the agreements attached as exhibits including Exhibit "N"- Bank Depositor Agreement attached and incorporated by reference.

With respect to any discrepancies between this Agreement and any exhibits referenced herein, or any other agreements with respect to the services referenced herein, or any of BANK's schedule of fees and charges, this Agreement shall prevail.

23. CORPORATE AND MUNICIPAL AUTHORITY. Each person signing on behalf of a party to this Agreement warrants that such party has performed all corporate or municipal actions necessary to make this a binding obligation of such party, enforceable in accordance with its terms.

24. ASSIGNMENT. Each party agrees that it will not assign and that it shall have no right to assign all or any part of this Agreement without the prior written consent of the other party. Any assignment by either party without the prior written consent of the other shall be void and of no effect for any purpose whatsoever. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

25. ACTS OF GOD. BANK shall not be liable for non-performance or delays not caused by BANK's fault or neglect, nor for non-performance or delays caused by or resulting from: (a) hostile or warlike action in time of peace or war, (b) riot, insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence or confiscation by order of any government or public authority; (c) strikes, lockouts or other labor disturbances; (d) authority of any present or future law or regulation to which BANK is subject; (e) acts of God; or (f) any other event or circumstance beyond BANK's reasonable control.

BANK shall regularly monitor the performance level of the cash management services in accordance with the Bank Administration Institute's (BAI) standards. CITY and BANK recognize that there may be operating, programming, or equipment error

resulting from telecommunication failures, a breakdown in an electronic data interchange, or computer breakdown. To the extent that these problems are not caused by BANK's fault or neglect, BANK shall not be liable for non-performance resulting from such occurrences.

26. CAPTIONS. The captions of sections of this Agreement are for reference only and are not to be construed in any way as a part of this Agreement.

27. TIME OF ESSENCE. Time is of the essence of this Agreement.

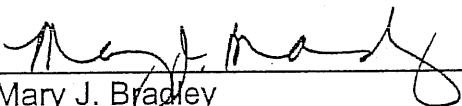
28. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be an Original and all of which shall constitute but one and the same instrument.

(IN WITNESS WHEREOF, CITY and BANK have executed this Agreement.

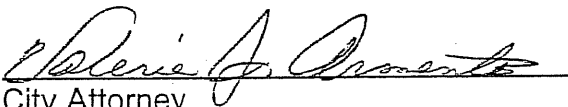
ATTEST:
CITY CLERK

BY 
Deputy City Clerk


CITY OF SUNNYVALE ("CITY")


Mary J. Bradley
Director of Finance

APPROVED AS TO FORM:


City Attorney

UNION BANK OF CALIFORNIA ("BANK")


Carol Donlon
Vice President